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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 26 2009

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PAC-WEST TELECOMM, INC.,

Complainant,

vs.

QWEST CORPORATION,

Respondent.

DOCKET NO. T-01051B-05-0495

DOCKET NO. T-03693A-05-0495

PROCEDURAL ORDER

BY THE COMMISSION:

On July 25, 2008, Qwest Corporation ("Qwest") filed a "Notice of Final Order and Remand" and a Motion for Judgment Pursuant to Mandate ("Motion") in the above-captioned dockets. Qwest had filed an action in the United States District Court for the District of Arizona ("District Court") seeking declaratory and injunctive relief from an Order of the Arizona Corporation Commission ("Commission") in Decision No. 68820. The District Court issued its Order in that action on March 6, 2008. By its Motion, Qwest seeks to have the Commission vacate provisions of Decision No. 68820 which Qwest claims were enjoined by the Order of the District Court and requests the Commission to order Pac-West Telecomm, Inc. ("Pac West") to refund Qwest the amount of \$1,849,153.22, which Qwest had paid to Pac-West pursuant to Decision No. 68820.

By Procedural Order dated September 30, 2008, Qwest's Motion to refund the amounts previously paid to Pac West was denied, and the Parties and Commission Utilities Division ("Staff") were directed to file position statements on the issue(s) they believe the Commission must address as a result of the District Court's remand, by November 10, 2008. A Procedural Conference was set for November 17, 2008.

On November 5, 2008, the FCC released its Order on Remand concerning ISP-Bound traffic.

1 Each of the parties to this matter desired additional time to analyze the effect of the FCC's recent
2 order and jointly requested that the November 10, 2008, date for comments be vacated. The request
3 was granted by Procedural Order dated November 4, 2008.

4 Pac West, Qwest and Staff appeared through counsel at the November 17, 2008, Procedural
5 Conference. Pac West believed that the holding in the November 5, 2008, FCC Order resolves this
6 matter without the need for an evidentiary hearing. Qwest disagreed about the impact of the FCC's
7 Order. By Procedural Order dated December 19, 2008, the parties were directed to file position
8 statements by January 16, 2009, and a Procedural Conference was scheduled January 21, 2009.

9 On January 16, 2009, Qwest, Pac West and Staff filed position statements as directed.

10 At the January 21, 2009, Procedural Conference Pac West indicated that it continued to
11 believe that the matter could be resolved by dispositive motion, while Qwest continued to assert that
12 the matter involved a mixed question of fact and law and that some kind of hearing would be
13 required. The most efficient and reasonable course of action appears to be for Pac West to file its
14 planned motion and for Qwest and Staff to address their positions in response thereto. The parties
15 agreed to the time frames of the schedule established herein.

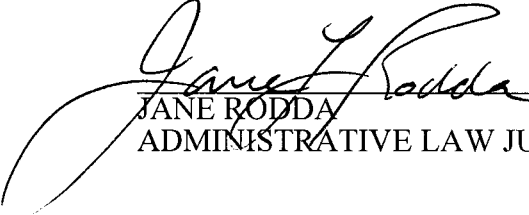
16 IT IS THEREFORE ORDERED that **Pac-West Telecom, Inc.** shall **file** any dispositive
17 **motion** in this matter by **February 13, 2009**.

18 IT IS FURTHER ORDERED that **Qwest and Staff** shall file their **Responses** to Pac West
19 Telecomm, Inc.'s motion by **March 30, 2009**.

20 IT IS FURTHER ORDERED that **Pac-West Telecomm, Inc.** shall file its **Reply** to Qwest
21 and Staff by **April 20, 2009**.

22 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
23 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

24 Dated this 21st day of January, 2009

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26 
27 JANE RODDA
28 ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
this 2/27 day of January, 2009 to:

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